

**REMARKS**

**INTRODUCTION**

In this Response, claims 13-15, 17-23, 30 and 32 is amended, claims 45 to 51 are newly presented and claim 33 is canceled. Support for the amendment and new claims can be found throughout the specification and Figures as well as the originally filed claims. Accordingly, no new matter has been introduced.

This amendment is made solely to expedite prosecution of the present application and do not constitute an acquiescence to any reference identified or rejection raised by the Examiner. Applicants reserve the right to further prosecute the canceled subject matter in a separate patent application.

**INTERVIEW WITH EXAMINER**

Applicant acknowledges with appreciation the courtesy extended by the Examiner during the formal telephonic interview with the Applicant's attorney of record on January 15, 2008. In accordance with MPEP § 713.04, Applicant summarizes herewith the details of the interview with the Examiner.

During the interview, the subject matter of the claims was discussed with particular attention directed to independent claims 32 and 33 and the prior art cited by the Examiner in the Office Action. The Examiner recognized that none of the prior art cited discloses or suggests each of the features of the independent claims, as now amended. In particular, the prior art cited does not disclose or suggest, the combination of features claimed.

### REMARKS

In the Office Action, the Examiner rejects claims 32, 2, 5-8, 33, 10, 19-23, 26-29, 42 and 44 as being anticipated by U.S. Patent No. 4,637,085 to Hartkorn. Applicants traverse.

Amended independent claim 32 now recites, *inter alia*, that expansion joint includes at least one lateral wing configured so as to be received in and contact a blockout area of a concrete slab. As discussed with the Examiner, Hartkorn discloses a joint construction in which the beading (6, 5) is not configured to be received in a blockout region of a concrete slab nor is it configured to be in direct contact with the concrete slab. The beading of Hartkorn necessarily is received in the sills (3, 4). Thus, the beading is only in direct contact with the sills of the construction joint. Indeed, the sills of Hartkorn's construction joint link the sealing body and directly bridge the joint to adjacent roadway. The beading (or lateral wings as alleged by the Examiner) are never in contact with the adjacent roadway, let alone a blockout region of a concrete slab. The beading is always disposed in the sills. (Hartkorn, col. 3, ll. 20-32). In this respect, Hartkorn actually teaches away from a one-unit construction having lateral wings in contact and received in a block out region of a concrete slab.

Further, amended claim 32 also recites that the width of the lateral wing is greater than the width of the compressible sealing portion. Hartkorn fails to disclose this feature of the invention of claim 32. Instead, Hartkorn only discloses wings having substantially the same width as the sealing portion. As the construction joint of Hartkorn does not have lateral wings configured to be received in a concrete slab, there is no need for the beading of Hartkorn to have

a width greater than the sealing portion. In sum, Hartkorn fails to disclose or teach the features of independent claim 32.

Additionally, new claim 45 recites that the expansion joint includes first and second lateral wings each having concrete-contacting lower surface configured to grip adjacent concrete slabs, as well as including a compressible sealing portion having an accordion-like compressible sealing portion. Hartkorn does not disclose or suggest any of these features. Accordingly, none of the pending claims are anticipated by Hartkorn. As such, Applicants respectfully request that the Examiner withdraw the rejection to the present claims in view of Hartkorn.

Claims 3, 4, 17-18 and 30 are rejected as being obvious in view of Hartkorn. Applicants respectfully traverse.

Dependent claims 3, 4, 17-18 and 30 each inherently recite the features of independent claims 32 and/or 45 discussed above. Accordingly, in addition to the recited materials of the dependent claims, the invention of those claims include lateral wings being configured to be received and in contact with a blockout region of a concrete slab. As discussed above, the construction joint of Hartkorn does not have lateral wings configured to be received in a block out region. As illustrated in the Figures (in particular Figure 1) of Hartkorn, the entirety of its construction joint is received between adjacent road surfaces within a gap or void. In other words, Hartkorn fails to disclose or suggest a construction joint having a laterally extending wing for receipt in a block out region of a concrete slab. Additionally, as illustrated by Hartkorn, the beading (5, 6) is substantially the same width as the sealing portion 1. There is no suggestion for

a lateral wing having a width greater than the width of the compressible sealing portion, especially in view of the fact that Hartkorn does not suggest a lateral wing contacted with or bonded or anchored to the concrete slab. Accordingly, Hartkorn does not suggest the invention of the present claims and arguably teaches away from such combination of features. Thus, Applicants respectfully request that the rejection to the claims as being obvious over Hartkorn be withdrawn.

Claims 15 and 43 are rejected as being obvious over Hartkorn in view of U.S. Patent No. 5,584,152 to Baerveldt. Applicants traverse.

Baerveldt fails to remedy the deficiencies of Hartkorn. Baerveldt does not disclose or suggest a lateral wing extending laterally from a top portion of a compressible sealing portion nor does Baerveldt teach or suggest a lateral wing having a vertical thickness greater than the vertical thickness of elastic membranes of the compressible sealing portion as claimed. Instead, the side flaps of Baerveldt extend laterally from a midpoint of a seal element, which would be necessary to provide an interference fit of element 14 (sealing flange) with the side flap. Thus, Applicants submit that even in combination Hartkorn and Baerveldt do not render the subject matter of the present claims obvious. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claim 15 and 43.

Applicants respectfully submit that these amendments to the claims overcome the rejection set forth in the previous Office Action and thus are in condition for allowance.

### CONCLUSION

On the basis of the foregoing Amendments and remarks, Applicants respectfully submit that the pending claims of the present application are allowable over the prior art of record. Applicants thus respectfully request that the pending claims be allowed by the Examiner. Favorable consideration and timely allowance of this application are respectfully requested. If the Examiner does not agree, Applicants invite the Examiner to contact the undersigned for a telephonic interview.

Applicant authorizes the Commissioner to charge any fees and/or credit any overpayments associated with this paper including any required fee for an extension of time pursuant to 37 C.F.R. 1.136 to Baker Botts, L.L.P. Deposit Account No. 02-4377.

Respectfully submitted,

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